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THE CONSOLIDATED STANDARD CONTAINER BILL

BY

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The consolidation of standard container legislation for fresh fruits and vegetables has been under consideration for several years. It was first discussed before this conference in 1931. At that time, except for purposes of study, the idea had not been drafted into a bill and thought was directed principally toward correcting recognized weaknesses and inconsistencies in existing laws and their administration. However, considerable thought was given to a suggested provision of particular interest to weights and measures officials, "devised in an attempt to make sure that the provisions of standard container legislation should not interfere with State laws or city ordinances respecting the sale of fruits and vegetables by weight."

Meanwhile, in 1934 and again in 1935, bills embodying the principles and purposes set forth in the preliminary study were introduced in Congress. (73rd Congress S-3270; 74th Cong. S-1460 and HR-8764). This proposed legislation came to be known and is still referred to as the "Byrd Bill", the provisions of which were discussed at your 1935 conference. This measure aimed not only to consolidate and equalize existing standard container laws and safeguard weights and measures administration, but also to extend the principle of standardization to cartons, crates and boxes. The standardization of sacks was not contemplated at that time.

This bill was reported favorably by the Senate Committee on Agriculture, but on the consent calendar failed to pass that body on two different occasions.

No action on the measure was taken in the House.

The bill now pending in the 76th Congress (HR-5530), was introduced by Congressman Somers of New York on April 14, 1939. It was written in the light of the public reaction to the Byrd bill, and reflects the constructive criticism and suggestions of the affected industries and further study by the Department of Agriculture during the intervening four years. Since the previous proposals were discussed before you I will confine myself to the essential differences between this bill and the Byrd bill.

First, certain controversial factors, such as the provisions relating to the marking of containers and the submission of production reports by manufacturers, have been eliminated. The marking of containers is believed to be adequately covered by the Federal Food, Drug and Cosmetic Act, and the gathering of production figures, while advantageous, it not vital to proper administration of container legislation.

Second, an attempt has been made in Section 8 to clarify the purpose and to specify the procedure to be followed in the standardization of cartons, crates, boxes, and sacks, a major portion of which are used for products packed and sold by net weight or numerical count. For such containers the only approach considered feasible is through conference and cooperation with the affected industries, in which the Government, on the one hand, becomes a clearing house of ideas and, on the other, an agency for the enforcement of regulations mutually worked out prior to promulgation.

Third, sacks, not mentioned in the Byrd bill, are included because in recent years they have become increasingly competitive with other types of containers to which the bill relates.

Fourth, Section 13 has been rewritten to clarify the relationship between State laws or city ordinances relating to the sale of fruits and vegetables and a Federal law establishing standards for containers for such products, and to reserve to the States the authority to regulate sales of fruits and

vegetables and to police the use of standard containers for such products when made or used in any manner other than as specifically provided in this section.

As indicated in the discussion of this matter in 1931, we believe this section to be extremely important and one that should be thoroughly and mutually understood. The present phraseology has been developed through a process of evolution, and we believe, effectively accomplishes the desired ends. What are these purposes? (1) To prohibit the use of standard containers as measures in localities which prohibit the sale of fruits and vegetables by measure; (2) to establish standard containers as legal units of sale, but only when they are properly packed with fruits or vegetables, and sold as original, unbroken packages;

(3) to establish such containers, properly packed with fruits and vegetables, as legal units of sale irrespective of the weight of the contents; and

(4) except in the above instances, to reserve to the States the authority to require fruits and vegetables to be sold by weight or count.

These purposes seem to be both logical and necessary, and so far as has been indicated, are generally acceptable, but it has been suggested that this section may not be wholly effective in preventing or regulating certain undesirable merchandising practices, such as repacking berries to obtain an extra quart from each crate, or preventing the misuse of containers as when quart baskets are used for the sale of large apples or pint cups for the sale of mushrooms by measure. We have given this matter considerable thought and feel that these ends can be accomplished administratively, at once or progressively as the needs arise, by judicious definition of certain terms in the regulations. For instance, the term "properly packed" might be construed to mean that the product shall be compactly packed in accordance with good commercial practice, that it shall not be slack nor overpressed, or loosely or insecurely arranged as by bridging. "Original, unbroken container" might be defined as one

the contents of which have not been packed from bulk or other containers, or removed or repacked by the retailer. If such definitions would not be wholly effective or if there are other loopholes that should be closed, we are sure the proponents of this legislation would appreciate having any constructive suggestion.

There are two proposals now being considered for the first time. One of these is designed to correct one of the prevalent evils of modern packaging, namely, overpacking to obtain excessive bulge. Present laws prohibit the use on containers of covers which reduce the capacity below that prescribed. Under section 9 of the present bill the use of covers to increase the capacity of containers would be subject to regulation within certain limits. It is believed that the growers of fruits and vegetables are entitled to protection against practices by which they may be defrauded, particularly when this would result in desirable stabilization of markets from which benefits to buyers, as well as sellers, are likely to accrue. In this instance also, the Government in cooperation with the affected industries would serve as a clearing house for the coordination of ideas and as the enforcing agency for any regulations that might be adopted.

The second new proposal (Section 12) would authorize the Secretary of Agriculture to waive prosecution in cases of minor infractions of the Act where it appears that the public interest would be adequately served by written notice or warning and where the necessary corrections are made. In such cases the offending containers could be placed under detention pending their correction, thereby furnishing a lawful means of cooperation between the government and the manufacturer in correcting minor deficiencies without resort to legal action.

Now, from the standpoint of weights and measures, what are the merits of this proposed legislation? First, it aims to apply to cartons, crates, boxes, and sacks the same principles of simplification and standardization that now apply to barrels, baskets and hampers for fruits and vegetables. For two decades in the distribution of fruits and vegetables we have enjoyed the advantages of a

limited number of standardized barrels, baskets and hampers, and it is believed that similar advantages and benefits will accrue from a reduction in the number of other types of containers used for the same purposes.

As defined in the Standards Yearbook for 1927, simplification or simplified practice means reduction in waste through the elimination of unnecessary diversity of sizes, types and dimensions of manufactured products. This improved efficiency is likely to result in . decreased production costs, decreased selling expenses, fewer misunderstandings, and lower costs to user or consumer.

That is precisely what the proposed legislation is designed to accomplish. It does not propose that all fruits and vegetables in packages shall be sold by measure, or that they shall be sold by weight, or by numerical count. On the contrary, it recognizes that in the marketing of fruits and vegetables packed in containers all three methods of sale are employed. It simply aims to reduce the number of such containers to the lowest minimum consistent with acceptable and approved distribution practices. We believe that no one who would not be in favor of abandoning the standards for containers now in effect could seriously oppose the extension of that principle to cover the whole field.

Exception has been taken to some of the standard sizes prescribed, but it should be understood that except in the case of cranberry barrel subdivisions this bill merely reenacts the standards now in force, and that in some degree these standards reflect current usage in some part of the United States. These standards have been included in this bill to avoid as much as possible unnecessary controversy, and disruption to present practices. If any of them could be eliminated, all well and good. We feel sure the Department of Agriculture would interpose no objection to such a proposal provided the interests chiefly affected were in agreement.

But, granting that some of the existing standards are less important, nationally, than others, the fact remains that they have been generally, suitable, acceptable and adequate. The non-use of an occasional standard may be a less

serious problem than is the promiscuous use of innumerable containers for which there are no standards.

Among other comments regarding the bill is one to the effect that "the power of the Secretary of Agriculture to cooperate with the State should be clarified", and another that "the bill should be so worded specifically that it does not apply to intra-state matters, but leaves intra-state laws on standards and their enforcement to State and municipal officials in State and local courts."

Now, the authority for the Secretary of Agriculture to cooperate with State, county, and municipal authorities is specifically set forth in Section 16, and could be repeated in other Sections such as 8 and 9, if this were considered necessary. Certainly, there seems to be no desire or intent to minimize the effectiveness of the legislation through any failure to take advantage of every constructive force, which in not a few instances could be expected to come chiefly from State officials.

According to the weight of precedent it does not seem that the provisions of this kind of legislation should be limited only to interstate commerce. Of the three existing laws, only one is an interstate commerce law, while two were enacted under the weights and measures clause of the Constitution. The last of the three to be enacted - the Standard Container Act of 1928 - is a weights and measures law applying universally in intra-state and interstate transactions. It has proved to be a satisfactory workable statute under which there has been a minimum of conflict or interference with State regulations. Moreover, it has the outstanding advantage that an unlawful package is unlawful wherever found, and may be proceeded against on the spot, irrespective of whether it has crossed - or ever will cross - State lines.

The Standard Containers Acts can be most effective if enforcement is preventive in nature. It must be applied at the source, that is, at the factories - before the containers are put into use or circulation. Under an interstate

commerce law no legal action can be undertaken against an unlawful package until movement in interstate commerce has occurred, which may be weeks or months after the packages were manufactured. We know from experience how difficult and impracticable it is to keep such items under surveillance during that period, and to apprehend such shipments when finally made. This, and the fact that standard units of merchandising or sale should be uniform throughout the country, in our opinion far outweighs all other considerations. And, incidentally, this arrangement affords a better basis for State and Federal cooperation than where jurisdictions meet and possibly conflict at State lines. If we keep in mind that the purpose of this legislation is chiefly to limit the number and fix the standard sizes of containers, the advantages of universal application will be apparent.

Several specific questions have been raised which relate to marking the quantity of the contents on the container. This bill has nothing to do with marking or labeling, or branding; the reason being that regulation in this field is a function of the Food and Drug Administration under the provisions of the Federal Food, Drug, and Cosmetic Act. The regulations under that Act apply to all packages of fruits and vegetables, whether the containers involved are standardized or not. Again, let me repeat, this bill aims chiefly to reduce the number of such containers and to standardize those that are retained. There is a provision under which "irregular containers" may be used if, in addition to marking required by the Food, Drugy and Cosmetic Act, they are so marked. But this is applicable only to containers that are likely to be confused with an established standard with which some individual may not wish to conform. It is in the nature of a warning signal to the purchaser or to the weights and measures inspector.

In conclusion, the basic principle of this legislation is not new. It is an effort to keep container standardization abreast of the times - a recognition that this is the package age. Approximately 90 percent of all fruits and vegetables is put up in some kind of package - barrels, baskets, hampers, crates, boxes, or

sacks. When barrels or baskets are used we know precisely what sizes are or may be used. But this is not true of the other types of containers which are used for much the larger portion of the total tonnage - approximately 70 percent. We know that such containers may be of any size, and that full advantage is taken of that privilege. At a recent hearing before the Interstate Commerce Commission, one exhibit contained the detailed dimensions of some 388 different crates and boxes used for railroad shipments of fruits and vegetables in 1937 and 1938. How many others moved by motor truck is not known.

Everyone dealing with them agrees there are too many containers. For example, concerning lug boxes for juice grapes, the secretary of a western organization said:- "It has been generally acknowledged that due to lack of uniform lugs for juice grapes, the trade has often been confused as to values. It is also generally believed that handlers, consumers, growers, and shippers have been injured by the use of many different sized lugs with different markings as to net weights."

Increasingly, the American people, through their legislative and regulatory agencies, see containers in general not merely as convenient merchandising units, but as necessary factors in modern distribution to be assimilated into the weights and measures system. In the realm of fruits and vegetables this view is steadily gaining ascendancy over the older concept of sales based on bushel weight.

At the moment we are confronted with making certain adjustments in enforcing the existing laws beginning July 1 because the proposed appropriation for such work has been reduced by 50 percent. What the effect of this curtailment of our activities will mean in terms of carelessness of manufacture, or in disregard of the requirements on the part of manufacturers, remains to be seen. If the cut becomes a reality, we will have to abandon a major part at least of the field work program begun in 1936, in which containers are examined and tested at the factory, and revert to the program of testing in the Washington office such

samples as may be voluntarily submitted by manufacturers - or which they may be persuaded to submit.

The chief difficulty with this arrangement is that the conscientious manufacturer will cooperate, and the careless one will not. Heretofore, we have been able to reach such careless individuals in person, but under present prospects this kind of personal investigation will have to be held to a minimum.

In this situation, it may be that weights and measures officials will want to interest themselves to a greater extent than considered necessary heretofore in seeing that factories in their districts make containers of the proper size. We invite your assistance, and shall be glad to cooperate with you on the cases you bring to our attention.

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